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IN THE CLAIMS

Please cancel without prejudice claim 52 and amend claims 1, 40-43, 46-47, and 50-51 as indicated in the following list of pending claims:

## PENDING CLAIMS

1. (Currently Amended) A biopsy instrument ~~for~~ for retrieving body tissue at an intracorporeal site, having a longitudinal axis and comprising: an elongated shaft having a distal shaft portion and a distal end having a tissue cutting surface adapted for entry into passage through tissue in a patient's body to the intracorporeal site; and  
[[a]] an electrosurgical cutting element longitudinally disposed on the distal shaft portion of said instrument proximal to the distal end, said cutting element being which is actuatable between a radially retracted position and a radially extended position, relative to said axis, and being movable rotatable in said radially extended position while energized with RF electrical energy to isolate separate a desired tissue specimen from surrounding tissue by defining a peripheral margin about said tissue specimen.

2-39 (Cancelled)

40. (Currently Amended) A biopsy device for isolating one or more tissue specimens from an intracorporeal site within a patient's body, comprising:

- a. an elongated shaft having proximal and distal ends, a longitudinal axis and a housing on the proximal end;
- b. a distal tip on the distal end having a tissue cutting surface configured for penetration through tissue of the patient's body to gain access to the intracorporeal site therein;

- c. a first electrosurgical tissue cutting element which is longitudinally disposed on a distal portion of the elongated shaft proximal to the distal tip, which is expandable from a retracted position to a radially extended position relative to the longitudinal axis, and which is movable in the radially extended position when powered by RF energy to isolate a tissue specimen from surrounding tissue at the intracorporeal site; and
- d. an electrical conductor which is configured to electrically interconnect the proximal electrosurgical tissue cutting element with a source of RF energy.

41. (Currently Amended) The biopsy device of claim 1 wherein the first electrosurgical tissue cutting element is rotatable at least in part about the longitudinal axis independent of the distal tip when energized by RF electrical energy.

42. (Currently Amended) The biopsy device of claim 40 wherein the tissue cutting surface on the distal tip [[has]] is a second electrosurgical tissue cutting element secured thereto which is energized with RF electrical energy to facilitate penetration of tissue to the intracorporeal site.

43. (Currently Amended) The biopsy device of claim 42 wherein the second electrosurgical tissue cutting element secured to the distal tip of the shaft has a curvilinear cutting surface[[;]].

44. (Previously presented) The biopsy device of claim 42 wherein the second electrosurgical tissue cutting element secured to the distal tip is a monopolar electrode.

45. (Previous Presented) The biopsy device of claim 42 wherein the second electrosurgical tissue cutting element secured to the distal tip is a bipolar electrode.

46. (Currently Amended) The biopsy device of claim 42 wherein an electrical conductor is secured to the second electrosurgical tissue cutting element secured to the distal tip and is configured to receive transmit RF electrical energy to the second electrosurgical tissue cutting element.

47. (Currently Amended) The biopsy device of claim 42 wherein the second electrosurgical tissue cutting element secured to the distal tip is in part distally spaced away from the distal tip.

48. (Previously presented) The biopsy device of claim 40 the first electrosurgical tissue cutting element comprises a monopolar electrode.

49. (Previously presented) The biopsy device of claim 40 wherein the first electrosurgical tissue cutting element comprises a bipolar electrode.

50. (Currently Amended) The biopsy device of claim 40 wherein the first electrosurgical tissue cutting element has a distal end secured to the elongated shaft and a proximal end which is configured to be moved longitudinally to radially move the first electrosurgical tissue cutting element to a tissue cutting configuration.

51. (Currently Amended) The biopsy device of claim 40 wherein the first electrosurgical tissue cutting element is configured to segment a tissue specimen after it has been isolated from the surrounding tissue by energizing the first electrosurgical

tissue cutting element as the tissue cutting element is returned to the retracted configuration.

52. (Cancelled)

53. (Previously presented) The biopsy device of claim 40 wherein the first electrosurgical tissue cutting element is radially expandable to a plurality of radially extended positions.

54. (Previously presented) The biopsy device of claim 53 wherein the first electrosurgical tissue cutting element is rotatable at least in part about the longitudinal axis in a plurality of radially extended positions.

55. (Previously presented) The biopsy device of claim 40 wherein the elongated shaft has an inner lumen for removing all or part of a tissue specimen from the patient's body.

56. (Previously presented) The biopsy device of claim 40, including an outer sheath which is disposed about the elongated shaft.

57. (Previously presented) The biopsy device of claim 56 wherein the outer sheath is axially movable between a distal position covering at least in part the first electrosurgical tissue cutting element and a proximal position uncovering at least part of the first electrosurgical tissue cutting element.

58. (Previously presented) The biopsy device of claim 40 wherein a driver unit is disposed in the housing for controlling radial expansion and retraction and rotation of the first electrosurgical tissue cutting element.

59. (Previously presented) The biopsy device of claim 58 wherein the driver unit further controls axial movement of the shaft and axial movement of said sheath.

60. (Previously presented) The biopsy device of claim 40 including at least one encapsulation element.

61. (Previously presented) The biopsy device of claim 60 wherein at least one encapsulation element is radially extendable from a radially retracted position to a radially extended position.

62. (Previously presented) The biopsy device of claim 40 wherein the first electrosurgical tissue cutting element isolates a desired tissue specimen from surrounding tissue by defining a peripheral margin about at least part of the tissue specimen when the first electrosurgical tissue cutting element is rotated at least in part around the longitudinal axis when electrically connected to a RF electrical power source.